

**Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or  
Punishment**

**Seventh Periodic Report**

**Response of the Kingdom of the Netherlands to the list of issues (CAT/C/NLD/QPR/7)  
transmitted to the State Party under the optional reporting procedure (A/62/44, paras. 23  
and 24)**

**THE KINGDOM OF THE NETHERLANDS**

## **Introduction**

The Kingdom of the Netherlands is using the optional reporting procedure adopted by the Committee at its 38th session and thus submitting this report under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on the basis of the list of issues adopted by the Committee at its 44th session (CAT/C/NLD/QPR/7).

The Committee has set a limit on the number of words that the replies to the 33 issues on the list may contain. Wishing to inform the Committee as clearly and fully as possible, and bearing in mind the scope of the questions and sub-questions, the Kingdom of the Netherlands has been obliged to incorporate the requested statistical data and the accompanying explanation in a number of annexes.

**1. Please clarify whether the crime of torture is incorporated in the criminal codes that are applicable in Curaçao and Sint Maarten, as well as in Bonaire, Sint Eustatius and Saba, and whether the definition of the crime is compatible with article 1 of the Convention.**

The Netherlands

In the case of Bonaire, Sint Eustatius and Saba the crime of torture is incorporated in the International Crimes Act (section 8), which entered into force in 2003 and is applicable in the European part of the Kingdom. The definition of the crime of torture in the Act is based on the definition in the Convention.

Curaçao

As part of the Kingdom of the Netherlands, Curaçao has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Torture was criminalised in the National Ordinance of 13 October 1995. On ratification the following declaration and/or reservation was made by the Netherlands with respect to article 1 of the Convention.

*Interpretative declaration with respect to article 1:*

‘It is the understanding of the Government of the Kingdom of the Netherlands that the term "lawful sanctions" in article 1, paragraph 1, must be understood as referring to those sanctions which are lawful not only under national law but also under international law.’

Consequently, the definition of the crime of torture is compatible with article 1 of the Convention.

**2. With reference to the Committee’s previous concluding observations (see CAT/C/NLD/CO/5-6, para. 9), please indicate whether the provisions of the Convention, including the definition of torture contained in article 1, have been directly invoked before and applied by judicial, administrative or other mechanisms throughout the State party. If so, please provide detailed examples from each part of the State party: (a) the European part, along with Bonaire, Saba and Sint Eustatius; (b) Aruba; (c) Curaçao; and (d) Sint Maarten. Please also indicate which measures have been taken to raise awareness of the Convention and its direct applicability among all public authorities in each part of the State party.**

The Netherlands

The government is unable to provide information on how many times the Convention has been directly invoked, because this is not recorded. Judgments published on [www.rechtspraak.nl](http://www.rechtspraak.nl) show

that in the last four years the Convention was invoked in 19 cases. In almost all these cases the court held that it had not been established that if the person in question was returned to the country of origin he/she would face a real risk of treatment incompatible with article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) or article 3 of the Convention against Torture. However, these figures are purely indicative since not all rulings are published. Furthermore, parties often confine themselves to invoking the corresponding provision in the ECHR.

With regard to raising awareness, like all other international agreements to which the Netherlands is a party, the Convention is published in the Dutch Treaty Series, which is freely accessible online. The Academy for Legislation and the Academy for Government Lawyers offer short general courses for civil servants on human rights, investing in the quality of primary legal advice and ensuring that every policy department is capable of recognising basic human rights issues. The Training and Study Centre for the Judiciary provides lifelong education for judges and other officers of the court which addresses issues such as torture, with the aim of enhancing their expertise in the realm of human rights. For example, there are courses on the ECHR that include consideration of article 3 of the Convention, i.e. the prohibition of torture, and the work of the Committee for the Prevention of Torture (CPT).

### Curaçao

The provisions of the Convention, including the definition of torture contained in article 1, have been directly invoked before and applied by judicial, administrative or other mechanisms throughout Curaçao. Examples include prosecutions of police officers for torture.

Measures have been taken to raise awareness of the Convention and its direct applicability among all public authorities in Curaçao. Those measures have included the human rights sessions conducted by the Directorate of Foreign Affairs, one of which specifically addressed the topic of torture and the Convention.

**3. With reference to the Committee's previous concluding observations (para. 10), and the information received from the State party on follow-up to the concluding observations, please provide updated information on:**

**(a) The status of adoption of the draft implementing legislation of Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer. Please also provide information on the type of cases in which the assistance of a lawyer can be**

refused on the grounds of urgent need to avert serious adverse consequences for a person's life, liberty or physical integrity or to prevent substantial jeopardy to the investigation. Please explain who, under the draft legislation, decides whether access to a lawyer should be refused, the maximum time for which a detainee may be denied access to a lawyer in such cases, whether the refusal can be appealed and to whom, and how frequently this refusal regime has been used;

(b) Any new legislation and measures taken in the meantime to guarantee that all persons deprived of their liberty have access to an ex officio lawyer as from the moment of deprivation of liberty and during interrogation by law enforcement officials. Please provide this information for each of the part of the State party. Please also explain how the State party safeguards access to a lawyer for migrants that have been placed in isolation and whether the new legislative proposal for a law on return and immigration detention will explicitly ensure access to a lawyer in such cases;

(c) Measures taken to incentivize the presence of lawyers in Bonaire, Saba and Sint Eustatius in order to effectively guarantee access to an ex officio lawyer from the moment of deprivation of liberty;

(d) Measures taken to ensure that all detainees can enjoy in practice their right to contact relatives or next of kin within 24 hours. Please explain whether there are any restrictions on this right, who can decide to refuse to allow such contact and under which circumstances;

(e) Measures taken in each part of the State party to ensure the monitoring of compliance by all public officials with fundamental legal safeguards, and to guarantee that public officials who deny these safeguards to persons deprived of their liberty are disciplined or prosecuted. Please include information on the number of complaints lodged and cases initiated for failure to comply with fundamental legal safeguards and the outcome of those cases, including the penalties applied, during the period under review.

#### The Netherlands

(a+b)

In September 2014 the government requested the advice of the Council of State on two bills. The first bill concerned the national implementation of Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings. The second bill contained additional provisions concerning

suspects, their lawyers and certain coercive measures. These topics do not directly arise from the EU Directive, but are related to the implementation bill. The Act and related Decree entered into force on 1 March 2017. For a detailed description of the legislative process and measures taken in the intervening period, please see the annexe to this answer.

The authorities may derogate from the right of access to a lawyer under circumstances which have been exhaustively described. This derogation is based on article 8, paragraph 1 in conjunction with article 3, paragraph 6 of Directive 2013/48/EU. The decision is taken by the assistant public prosecutor with the permission of the public prosecutor. Legal assistance may only be refused on the grounds of urgent need to avert serious adverse consequences for a person's life, liberty or physical integrity or to prevent substantial jeopardy to the investigation. The decision and the grounds on which it is based are stated in the official record of the interview. The accused/counsel for the defence can lodge an objection to the refusal in court, where the judge will decide if it was lawful. The legislator has expressed the expectation that legal assistance will be refused in very few cases. As yet we have no practical experience in this area.

Access to a lawyer for migrants who have been placed in isolation is available at present, and will also be available under the new legislative proposal. Persons placed in isolation can contact their lawyer if they wish to do so. Access to a lawyer is provided for from the moment a migrant is deprived of his liberty (section 100, Aliens Act 2000). Furthermore Dutch legislation also provides for access to a lawyer during the preparation of a decision to detain a migrant (articles 4.18 and 5.2, Aliens Decree).

(c)

As of 1 January 2016 the fees lawyers receive for providing legal aid in Bonaire, Saba and Sint Eustatius have been increased. As a result, more lawyers in Curaçao are prepared to provide legal aid to people in Bonaire. There are now more than enough lawyers available to litigants in Bonaire. Because there are no lawyers established in Saba and Sint Eustatius, legal aid there is provided by lawyers from Sint Maarten, who have also been receiving the increased rate since 1 January 2016.

(d)

Police regulations stipulate that in the case of adult detainees, third parties can only be informed of their detention at the request of the detainee. Where minors are concerned, the police always inform their legal representative. The right of notification can be suspended by the Public Prosecution Service in the interests of the investigation.

(e)

Humane treatment of detainees is a core responsibility of prison and detention centre staff. Every member of staff has an annual job performance interview that assesses how they fulfil this responsibility. The consequences for staff failing to comply with fundamental legal safeguards may include dismissal. Complaints about breaches of fundamental legal safeguards can be submitted to one of the various independent supervisory committees in custodial institutions. Information about such complaints is held by the committees.

#### Curaçao

The right of access to a lawyer is guaranteed in article 48 of the Curaçao Code of Criminal Procedure: everyone must be able to consult a lawyer from the moment they are deprived of their liberty.

Following the ECtHR's *Salduz v. Turkey* judgment (ECtHR, 27 November 2008) and the judgment handed down by the Dutch Supreme Court on 30 June 2009 (ECLI:NL:HR:2009:BH3079), the Public Prosecutor's Office announced new instructions ensuring this right and replacing older instructions. The new (2009) instructions state that all suspects under the age of 18 must have access to a lawyer prior to questioning; moreover, the minor's lawyer and a trusted person must also be present.

This right was broadened again as of 1 March 2016 by instructions bringing the situation into line with the Supreme Court's judgment of 22 December 2015 (ECLI:NL:HR:2015:3608). New elements include the investigating officer's duty to inform all arrested suspects, both adults and minors, prior to the first interview, of their right to have their lawyer present during questioning. The interview may not start without the presence of the lawyer. All migrants detained by the police have the same access as local suspects to legal counsel provided by the State.

(e)

A variety of measures are in place in Curaçao to ensure that public officials comply with fundamental legal safeguards. Any person deprived of their liberty may lodge a complaint with the police Internal Affairs Department which carries out an investigation. All cases are reviewed by the Public Prosecutor, who decides if the public official concerned should be disciplined or prosecuted.

**4. With reference to the Committee's previous concluding observations (para. 30), please provide the following information in relation to domestic and gender-based violence**

**for each part of the State party and for the period under review:**

- (a) Annual data, disaggregated according to the type of crime and the age and sex of the victim, on the number of victims of domestic and gender-based violence, including the number of those who died as a result, the number of complaints lodged or allegations registered by the police, the number of such complaints that were investigated, how many of those complaints led to prosecutions and convictions and the punishment imposed in those cases. Please also indicate the number of protection orders granted compared with the number requested;**
- (b) Updates on the means of redress provided to victims, including legal, medical and psychological assistance, the number of shelters and their occupancy rate, the procedure to obtain compensation, the percentage of cases in which compensation was awarded and the average compensation granted;**
- (c) Updates on the measures taken to strengthen the prevention, investigation and punishment of all forms of domestic violence, including the neglect of children, and gender-based violence, particularly in Bonaire, Saba and Sint Eustatius. Please indicate whether there is a methodology in the State party for assessing the effectiveness and impact of all the initiatives in this area;**
- (d) Updates on the steps taken to sensitize and train law enforcement personnel on the investigation and prosecution of cases of domestic and gender-based violence and on awareness-raising measures to fight gender stereotypes and domestic violence among the population at large. Please also indicate the measures taken to inform victims of domestic violence with residence status as dependants of the possibility of seeking assistance and residence status as independent persons.**

The Netherlands

(a-d)

In general, the government would reiterate that national data protection legislation prevents the registration of ethnicity. It would refer the Committee to the follow-up information for statistical data up to 2013. For more recent statistical data and information on shelters and their occupancy rate, please see the annexe to this answer. See also the answer to question 24.

Two major reports – a 2013 report on the rights of children, and a 2014 report on domestic violence – made it clear that domestic violence and child abuse were common problems in the



Caribbean Netherlands. The records kept of this problem are inadequate. The European Netherlands works together with Caribbean Netherlands in tackling domestic violence and child abuse. Bonaire, Sint Eustatius and Saba have taken a number of concrete steps. In March 2015 a 'Safety House' was opened on Bonaire. Partners in the criminal justice system, including the police, public prosecutor and the probation services, work together with the Guardianship Council, and institutions in the field of health and youth care, welfare, education and social affairs, on cases involving elements of both care and safety, such as domestic violence and child abuse. The functioning of the Safety House on Bonaire will be evaluated. If its approach proves to be effective, it may be extended to Sint Eustatius and Saba.

In the coming period the European and Caribbean Netherlands will conclude an agreement for 2017-2020. The aim is to strengthen policy on combating domestic violence. The agreement will address four priorities: prevention, learning skills for professionals, strengthening the help and support system (including safe shelters) and an accessible reporting structure. The approach to domestic violence and child abuse must be combined with tackling issues like poverty, unemployment and bad housing: an integrated approach is necessary. For this reason, different ministries are involved, from social affairs to security and justice.

Municipalities, the Veilig Thuis ('Safe at Home') domestic violence advice and reporting centres, the police and the Public Prosecution Service work together to combat domestic violence. In November 2015 the police appointed a programme manager to oversee various domestic violence and child abuse projects. The Public Prosecution Service has set up the Youth, Family and Sexual Offences Programme and taken steps to improve expertise among public prosecutors. The Immigration and Naturalisation Service (IND) is in regular contact with the relevant actors in this field, including the police and municipal organisations offering shelter, and provides them with information on the options for independent residence permits for victims of domestic and honour-related violence. An online brochure on this subject can be consulted by the different organisations assisting women in this situation, legal advisers and women themselves. In individual cases the IND will provide information directly to victims or their legal advisers if there are signs of domestic or honour-related violence.

#### Curaçao

(a)

In Curaçao the term 'domestic and gender violence' encompasses not only domestic violence but all kinds of violence occurring within family and romantic relationships. It therefore includes

violence against children and the elderly. The Public Prosecutor's Office prosecutes all persons suspected of offences within these categories and works closely with three key partners in Curaçao: the Probation Office, the Victim Support Foundation (SSHC) and the national police force. See also tables 1-4 in the annexe.

(b)

The SSHC registers victims of crime, traffic accidents and disasters and provides shelter and assistance. As a front-line care provider, it is directly accessible to all victims and their relatives. In 2015 the SSHC received 1,009 reports; for their categorisation according to type of problem please see table 5 in the annexe.

The SSHC currently has one safe shelter with seven places. The shelter is intended for women, and children up to the age of 12. Shelter for children older than 12 depends on availability. At present there is no shelter for adult males, who are accommodated in hotels if they are the victim of domestic violence, human trafficking or people smuggling. The annual average occupancy of the shelter is 90%.

The shelter offers victims a bed, food and sanitation facilities. A medical examination is performed when victims arrive at the shelter. Through PSI Skuchami (which offers outpatient mental health care) the SSHC ensures that victims can receive psychological counselling. Furthermore, article 374 of the Criminal Code gives victims of violent crime the right to join criminal proceedings as an injured party. The SSHC supports victims applying for compensation by drawing up a joinder report. In 2015 the SSHC submitted 62 joinder reports on behalf of victims. The total in 2014 was 54. Further agreements are made with victims to inform them about the date of the hearing, the continuance of the case and its outcome.

The SSHC states that the number of applications for compensation and amounts awarded are rising. However, there is no registration by the Public Prosecutor's Office or the SSHC of the number of awards made to victims or actual payments made.

Besides the option of joinder, victims may also begin civil proceedings against the offender.

(c)

The government invests heavily in the prevention of domestic and gender-based violence. In 2015 the Minister of Justice declared November to be the month of awareness regarding such violence. Each year the partners in the criminal justice system work together on an awareness campaign entitled 'No Mas, No More'. Both the Public Prosecutor's Office and the police force have made

domestic and gender-based violence a priority so that it receives the necessary attention.

Since the SSHC attaches great importance to prevention (primary, secondary and tertiary), it makes information generally available through traditional and social media (including its website). SSHC staff regularly visit schools, companies and other organisations to talk about these issues.

Between 2013 and 2016 government bodies, non-governmental organisations and foundations aiming to combat violence against women and child abuse worked on a national action plan to combat domestic violence and violence against children.

(d)

Each year the Public Prosecutor's Office, in cooperation with its partners, provides training for police personnel in this area, although the subject is covered in basic police training too.

On the basis of an agreement between the immigration service and the Victim Support Foundation, victims of domestic violence with a temporary residence permit which is dependent on that of their life partner, who has been accused of domestic violence, are eligible for an independent residence permit if they fulfil the necessary requirements. We do not have figures on the numbers of such cases.

**5. With regard to the Committee's previous concluding observations (para. 25), please provide the following information in relation to the crime of trafficking in human beings for each part of the State party and for the period under review:**

**(a) Annual statistical data, disaggregated by age, sex, country of origin and employment sector of the victim, on the number of victims of trafficking and the number of complaints lodged and reports registered by the police regarding this crime, the number of those that were investigated, how many led to prosecutions and convictions and the punishment imposed in these cases. Please also provide information on the outcome of the motion adopted by the Parliament of the Netherlands in 2013 to start an independent investigation of trafficking occurring in Bonaire, Saba and Sint Eustatius;**

**(b) Updates on the means of redress provided to victims, including legal, medical and psychological assistance, the number of shelters and their occupancy rate, the procedure for obtaining compensation, the percentage of cases in which compensation was awarded and the average compensation granted. Please explain the efforts undertaken to provide residence permits, even when the victim is unable to cooperate with the authorities, and protection against return to all victims and witnesses of trafficking, particularly when the**

person would be in danger of torture, exploitation or ill-treatment in his or her country of origin. In this regard, please indicate the percentage of victims of trafficking that were granted a residence permit. Please also indicate the assistance and protection measures provided to victims and witnesses, irrespective of their wish to pursue a case against the traffickers or of the success of the criminal investigation;

(c) Measures taken to strengthen the prevention, investigation and punishment of trafficking, as well as the identification of victims, particularly underage victims of “lover boy” scams on the Internet. Please indicate whether a national referral mechanism has been set up, in compliance with directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Please also indicate if any research was conducted into the impact of preventive measures and criminal justice responses aimed at countering trafficking, with a view to increasing their effectiveness;

(d) Steps taken to sensitize and train front-line professionals in identifying victims of trafficking, particularly for the purpose of labour exploitation in high-risk sectors (e.g. agriculture, catering, dock work, meat processing and construction), and law-enforcement personnel, prosecutors, judges and labour inspectors in investigating, prosecuting and punishing cases of trafficking, as well as assisting and protecting the victims;

(e) Awareness-raising campaigns targeting the population at large, including with the aim of discouraging demand, in the light of the assessment of the impact of previous measures.

#### The Netherlands

(a)

For statistical data please see the annexe to this answer.

In 2013 a crime pattern analysis (including human trafficking) was carried out for Bonaire, Saba and Sint Eustatius. The organisations involved saw no need for an additional independent investigation of trafficking on the islands. The Memorandum of Understanding on Human Trafficking and Smuggling and Illegal Immigration concluded by the Netherlands, Aruba, Curaçao, Sint Maarten, and Bonaire, Saba and Sint Eustatius includes an agreement to update the crime pattern analysis every two years.

(b)

Please see the annexe to this answer for detailed information on shelters and their occupancy rates, redress, and residence permits for victims of human trafficking.

(c)

Please see the annexe to this answer for an overview of the various measures that have been taken since 2013 and the initiatives forming part of the national referral mechanism project.

With regard to research, the National Rapporteur reports to the government on the nature and extent of human trafficking in the Netherlands. She reports annually on the number of victims and on the investigation and prosecution of perpetrators; she also publishes research on specific topics.

(d)

Inspectors working for the Inspectorate SZW of the Ministry of Social Affairs and Employment followed training courses in 2015 and 2016 to help them recognise the signs of human trafficking for the purpose of labour exploitation. Their training included study materials produced by the 'Development of Common Guidelines and Procedures on Identification of Victims of Human Trafficking (2011-2013)' project. Investigating officers at the Inspectorate SZW followed a course entitled 'Approach to tackling human trafficking for other forms of exploitation' at the Dutch Police College in order to obtain certification.

The Inspectorate SZW has good contacts with the Human Trafficking Coordination Centre (CoMensha), which organises shelter for victims of labour exploitation.

The Training and Study Centre for the Judiciary (SSR) offers specialised courses for judges and prosecutors on human trafficking (for the purposes of sexual and labour exploitation). In addition, the general education of criminal law judges and prosecutors addresses the issue of victims, including the important matter of compensation.

The FairWork project (financed by the Ministry of Social Affairs and Employment and supported by the Inspectorate SZW) has provided training to staff at 40% of the 390 municipalities on how to recognise, respond to and report human trafficking.

(e)

In the Netherlands, information aimed at preventing human trafficking for the purposes of sexual and labour exploitation is disseminated in two ways. First, members of the public can access information online, for example in the form of digital leaflets in a range of languages about sex

work and labour exploitation, aimed at current or potential victims. Second, the Netherlands collaborates with the primary countries of origin in Central and Eastern Europe. Dutch embassies provide information about living and working in the Netherlands that is geared towards potential labour migrants. The Dutch government also holds frequent consultations on this issue with counterparts in several countries of origin.

Over the past few years, the Ministry of Security and Justice has financed campaigns run by M. (Meld Misdaad Anoniem - Report Crime Anonymously) to make the general public, as well as sex workers, clients and social workers, aware of human trafficking for the purpose of sexual exploitation and encourage them to report cases of exploitation. In 2016 M. introduced a new campaign on forced prostitution, with a focus on minors. At the end of 2015 a campaign was launched to raise public awareness of human trafficking for labour exploitation; this was financed by the Ministry of Social Affairs and Employment. The campaign included a film, a radio commercial and a special website explaining how to recognise the signs of human trafficking for labour exploitation and where to report any suspicions. The campaign was repeated in 2016, this time also on social media.

### Curaçao

(a)

Article 2:239 of the Curaçao Criminal Code prohibits all forms of human trafficking (for the purposes of sexual exploitation, organ removal or labour). In 2014 the VICTORIA sex trafficking investigation was carried out. It focused on three alleged offenders who were suspected of trafficking foreign women to work in a nightclub. The investigation concluded in May 2014. The nine identified victims of trafficking were all women from Colombia and the Dominican Republic. They were offered victim support.

On 3 October 2014, two of the defendants (the nightclub owner and the club manager) were convicted of sex trafficking under article 2:239 of the Criminal Code. A civil servant employed by the police force was the third defendant. He was acquitted on the charges of sex trafficking, but was convicted of illegal possession of a firearm and for a breach of official secrets legislation. He was sentenced to 200 hours of community service and was dismissed from the police force.

The other penalties imposed included a prison term of 36 months (of which 12 months were suspended for three years) for the nightclub owner and 18 months (of which 6 months were suspended for three years) for the nightclub manager.

In 2016 the FLAGGS investigation was launched. Three suspects were detained and are currently awaiting trial at home. The case involves one victim of sex trafficking from Venezuela.

See table 6 in the annexe for annual data on human trafficking cases.

Realising that an important first step towards an effective approach to human trafficking is to raise awareness of the seriousness of this phenomenon among the front-line workers who are in a position to identify it, the authorities have organised campaigns focusing on these workers. For a list of the awareness-raising campaigns organised during the period under review, please see table 7 in the annexe.

**6. With regard to the Committee's previous concluding observations (para. 28), please indicate what progress has been made to extend the ratification of the Optional Protocol to the Convention to Bonaire, Saba and Sint Eustatius, and the autonomous entities of Aruba, Curaçao and Sint Maarten. In addition, please indicate the measures taken to ensure complete financial, operational and organizational independence of the three inspectorates integrating the national preventive mechanism (i.e. the Inspectorate of Security and Justice, the Health Care Inspectorate and the Inspectorate for Youth Care), in accordance with article 18(1) of the Optional Protocol and the guidelines on national preventive mechanisms of the Subcommittee on Prevention of Torture. Please also clarify whether the national preventive mechanism can monitor all places where persons are deprived of their liberty other than penal institutions and youth detention centres.**

#### The Netherlands

To date, the Optional Protocol has not entered into force in Bonaire, Saba and Sint Eustatius. There is nonetheless a degree of supervision: the Committee makes regular visits, as does the Law Enforcement Council. The possibilities for the Protocol's entry into force are currently being explored.

The Dutch national preventive mechanism (NPM) brings together a number of existing visiting and advisory bodies. As a whole, they have all the powers which the Protocol deems they should be able to exercise. For example, they can visit places where people who have been deprived of their liberty are held. This means that besides police cells and custodial institutions, they can also visit care institutions where people have been involuntarily admitted. All the organisations that make up the Dutch NPM function independently of each other. On the basis of their work programme and professional expertise the central government inspectorates, for example, are able to independently collect information which they then evaluate and can use as the basis for reports

and recommendations. In addition, the Council for the Administration of Criminal Justice and Protection of Juveniles and the supervisory committees are independent and impartial and operate independently from the ministries, the Defence organisation, the custodial institutions and the police. The NPM's annual report is sent to parliament, possibly with a policy response from government but with no prior review of content.

#### Curaçao

The Health Care Inspectorate is financially and organisationally part of the Ministry of Health, but is operationally independent.

**7. With reference to the Committee's previous concluding observations (para. 29), please indicate what steps have been taken by the governments of Aruba, Curacao and Sint Maarten to establish national human rights institutions.**

#### Curaçao

The Directorate of Foreign Affairs organised a number of human rights sessions for government bodies and NGOs to raise awareness and encourage cooperation on human rights in Curaçao. One of the sessions was specifically dedicated to establishing a human rights institution on Curaçao. Institutions such as the Ombudsman and the University of Curaçao as well as an influential NGO (Sentro di Dama or SEDA) have demonstrated their commitment to working towards a national human rights institution.

**8. With regard to the Committee's previous concluding observations (para. 31), please provide annual statistical data for each part of the State party and for the period under review, disaggregated by the type of asylum procedure and the sex, country of origin and age of the person concerned, on:**

**(a) The number of asylum applications registered and the number of applications processed;**

**(b) The number of applications for asylum, refugee status or other forms of humanitarian protection that were granted, indicating, when applicable, the number of cases in which protection was granted in application of the principle of non-refoulement;**

**(c) The number of persons extradited, expelled or returned and the countries to which they were expelled or extradited;**

**(d) The number of appeals against expulsion or extradition decisions on the basis that**



**applicants might be in danger of being subject to torture in their countries of destination, and the result of those appeals.**

The Netherlands

(a-d)

The government would reiterate that national data protection legislation prevents the registration of ethnicity. Nor is data available relating to the age and sex of the persons concerned. Furthermore, the IND system does not record the exact grounds that have led to a positive decision on an individual's application for asylum. The Netherlands is therefore unable to provide exact data on how many asylum residence permits were granted under the principle of non-refoulement. Please see the annexe for the information that is available and an explanation of the figures.

**9. With reference to the asylum procedure and the Committee's previous concluding observations (paras. 11 and 13), please provide information for each part of the State party on:**

**(a) Measures taken to ensure that asylum seekers, especially those applying under the accelerated procedure, have sufficient time to fully indicate the reasons for their application and substantiate their claims. Please also indicate the criteria according to which a case is dealt with under the accelerated procedure as opposed to the extended procedure and indicate how many applications of unaccompanied children were processed under the accelerated procedure and the measures taken to ensure that the protection needs of asylum seeking children are identified and addressed;**

**(b) Measures taken to ensure that a complete review of prior asylum decisions takes place in instances in which new evidence is provided in a new asylum request;**

**(c) Measures taken to ensure that the assessment of a well-founded fear of being subjected to torture in the country of destination takes into account previous experience of persecution or serious harm, and not only whether protection against widespread and generalized violence in the country is provided. In this regard, please comment on the compatibility with the Convention of the return of three men to the Democratic Republic of Congo after having given testimony to the International Criminal Court in proceedings against a Congolese former militia leader. Please also indicate the measures taken to ensure that persons claiming asylum on the basis of their sexual orientation are not sent to**

**a country where they can suffer persecution. In addition, please indicate the measures taken to refrain, in practice, from setting a higher burden of proof for undocumented asylum seekers than for documented applicants. Please also indicate whether article 29 (1) (c) of the Aliens Act has been amended and, if so, provide details of the amendment;**

**(d) Measures taken to ensure that all persons seeking asylum in the State party, including at its border crossings, enjoy all procedural guarantees, including adequate access to free-of-charge and qualified legal assistance and interpreters throughout the asylum procedure, including the appeals procedure;**

**(e) Measures taken to ensure that the appeal procedure provides for a full review of rejected applications and that the evidence presented throughout the appeal process and after the initial decision has been taken is fully considered. Please clarify whether there is an effective judicial remedy with automatic suspensive effect to challenge the deportation of asylum applicants and undocumented immigrants.**

#### The Netherlands

(a)

The government would reiterate that the asylum procedure is not an accelerated procedure (as assumed in the question) but a general procedure which can be extended under certain circumstances. The government refers to the annexe to answer 6a in the sixth periodic report for a detailed description of the asylum procedure.

(b)

If an asylum seeker presents new evidence in a subsequent application, the Immigration and Naturalisation Service first establishes, in accordance with the recast Asylum Procedures Directive (2013/32/EU), whether it contains new elements or findings, which includes new evidence. In such cases relevant new information will be examined and assessed in light of the earlier application.

(c)

Article 4, paragraph 4 of the Qualification Directive (2011/95/EU) states that the fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated. This provision is implemented in section

31, subsection 5 of the Aliens Act 2000.

The three witnesses who applied for asylum during their detention under the authority of the International Criminal Court (ICC) were returned to the Democratic Republic of Congo (DRC) as neither the highest national court nor the ECtHR saw any legal impediment to their return. The ICC put protective measures into place in order to safeguard the fundamental rights of the individuals concerned upon their return to DRC.

The credibility of an asylum seeker's statements concerning his/her sexual orientation is taken into account in decision-making as to whether they qualify for asylum. The situation in the country of origin is also taken into account. Documented and undocumented asylum seekers bear the same burden of proof, although an undocumented person may have to provide more information about the country of origin so that the authorities can clearly establish that they indeed originate from the country they claim to come from.

Section 29, subsection 1, first sentence and (c) of the Aliens Act 2000 was repealed as of 1 January 2014. The explanatory memorandum accompanying this amendment stated that it was primarily the harmonisation of asylum policy within the EU, in conjunction with developments in case law with regard to protection under article 3 of the ECHR, which had led to asylum residence permits being granted to an ever-increasing degree on international grounds.

(d)

All asylum seekers are assigned free legal assistance at all stages of the asylum procedure, and all interviews take place in the presence of an interpreter.

(e)

Since 20 July 2015 the recast Asylum Procedures Directive (2013/32/EU) has been implemented in the Dutch Aliens Act. As of that date, the Act explicitly states that the district court must make a full and ex nunc examination of both the factual and legal grounds for the application including, where applicable, an examination of the need for international protection. An application for review lodged with the district court has suspensive effect except in the cases in which the Procedures Directive explicitly permits the decision on whether to allow the applicant to await the court ruling in the member state to be left to the court (section 82, subsections 1 and 2 of the Aliens Act 2000).

**10. With regard to the Committee's previous concluding observations (para. 12), please provide the following information for each part of the State party:**

**(a) Measures taken to provide for a thorough medical and psychological examination and report, in accordance with the procedures set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), by trained independent health experts, with the support of professional interpreters, when signs of torture or trauma have been detected during personal interviews of asylum seekers or undocumented migrants, with a view to providing them with immediate treatment and rehabilitation;**

**(b) The number of torture victims identified among asylum seekers in relation to the total number of asylum seekers.**

#### The Netherlands

(a)

The Central Agency for the Reception of Asylum Seekers (COA) organises access to preventive and curative health care services for residents of its reception locations. As far as possible, it makes use of the regular health care services available to all Dutch residents.

The care model for asylum seekers focuses on the accessibility, quality and affordability of care. Every asylum seeker undergoes a medical intake assessment at the beginning of the asylum procedure, intended to evaluate the person's state of health. The assessment is performed by a medical professional, with the assistance of an interpreter where necessary. The assessment is based on a translated questionnaire. It is the asylum seeker's responsibility to ensure that this is completed as accurately and fully as possible. Depending on the conclusions of the care professional, a more extensive medical assessment can be performed at a later stage, or the asylum seeker may be immediately referred to medical professionals at the location. Asylum seekers can then be referred to secondary health care services by a GP at the reception location. The medical team at the location includes a primary mental healthcare professional. The care model does not include a specific policy on residents who have experienced torture, rape or other forms of serious violence. Its aim is to ensure that everyone who is in need receives the appropriate care. The medical professionals working at the locations have considerable experience and receive regular training in how to approach the target group and to deal with issues specific to the group. Other COA staff also have professional experience with regard to identifying specific problems, and can alert the medical staff where necessary, subject of course to the right to privacy of the person concerned.

(b)

Unfortunately, there is no information available on this subject.

**11. Please indicate whether, since the consideration of its previous report, the State party has rejected, for any reason, the request of another State party for the extradition of an individual suspected of having committed torture and, if so, whether it has started prosecution proceedings against such an individual as a result. If so, please provide information on the status and outcome of such proceedings.**

#### The Netherlands

There are no known cases in the reporting period of a request for extradition being refused. In 2016 a person was extradited who was suspected of committing murder and torture while in government service. This person has since been tried in the country of origin and is serving a prison sentence. At the Netherlands' request, a non-governmental organisation (NGO) assumed responsibility for monitoring the proceedings and the conditions of the extradited person's detention.

#### Curaçao

Curaçao has not rejected any request from another State party for the extradition of an individual suspected of having committed torture.

**12. With reference to the Committee's previous concluding observations (paras. 8 (c), 12 and 19), please provide information on the instruction provided for law enforcement personnel at all levels, State security organs, prison staff, immigration officials, judges, prosecutors, medical personnel dealing with detainees, forensic doctors and any other State agents involved in holding persons in custody, interrogation or treatment of any individual under any form of detention or imprisonment, including the overall size of the target group and the percentage of those trained, as well as the periodicity of the training, with respect to:**

- (a) The provisions of the Convention;**
- (b) The guidelines used to detect signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Istanbul Protocol;**
- (c) Communication skills to deal with difficult detainees and non-coercive investigatory and restraint techniques, as well as the principle of the use of force as a last resort;**
- (d) Issues related to violence against ethnic minorities, as well as against persons**

**because of their sexual orientation or gender;**

**(e) Identification and referral of victims of trafficking, torture and sexual violence among asylum seekers.**

The Netherlands

(a-e)

All staff members of the Dutch Custodial Institutions Agency (DJI) who have direct contact with detainees follow training courses at its training institute. Training includes aggression regulation, detection of psychiatric disorders and in taking action to achieve de-escalation. These courses form part of the compulsory initial training. Some are repeated every year, others once every two years. In addition, all executive staff members are trained in motivational interviewing, which employs non-coercive methods to deal with behavioural issues. The initial vocational training of staff devotes considerable attention to cultural diversity. The surveys conducted among detainees and staff members once every two years focus on violations on both sides. An anti-torture training course for prison staff includes a module on criminal law and legislation. Another important element is the ethical behaviour protocol, which includes detailed instructions on how and when force may be used against prisoners. Special training is available for staff working with sex offenders. These staff are usually employed on a vulnerable prisoners' wing or in a prison psychiatric unit. In 2016, the DJI training institute provided training to 14,657 persons, an increase of 30% compared with the year before.

Where medical issues (as referred to in the Istanbul Protocol) play a role in migration procedures, this is taken into account in the training offered to the professionals in question, both medical advisers from all partners and IND staff who rely on their reports. Interviewers and decision-making officers either take a course in dealing with trauma, or the interviewing vulnerable persons module in the Training Curriculum recently introduced by European Asylum Support Office (EASO). Both these courses focus not only on the health check, but also on other signs that staff may themselves observe during the interview and decision-making process. Provisions relating to scars and trauma are also included in the protocol for medical staff carrying out the health check during the period of rest and preparation. IND staff also receive training in identifying and referring victims of trafficking, torture and sexual violence among asylum seekers. COA staff receive special training on vulnerability.

With regard to police personnel, judges and prosecutors, please see the answers to question 2 and 26.

There is, unfortunately, no information available on the overall size of the target group or the percentage trained.

#### Curaçao

(a)

In 2015 a number of prison officers started the training course for staff in custodial institutions (PIW) which devotes considerable attention to the treatment of prisoners. The provisions of the Convention are to be covered as part of the curriculum of the annual refresher courses. As of October 2016, 122 of a total of 157 prison officers had completed the PIW course. Please see table 8 (staff planning 2016) in the annexe. Following the theoretical component, all officers have to complete a practical component to ensure that changes in the treatment of prisoners are translated into their daily work.

With regard to police officers and prevention, it should be noted that they are obliged to take a comprehensive skills training course. This consists of (1) management of the use of force (including study of the relevant provisions of the Police Code of Conduct concerning the use of firearms, other weapons, handcuffs and police dogs); (2) arrest and self-defence skills; and (3) firearms proficiency. Each part of the course concludes with an examination which the participant must pass.

(b)

Medical personnel at the Detention and Corrections Centre (SDKK) are especially alert to signs of torture or ill-treatment. The guidelines for medical personnel are contained in protocols and a policy and procedure handbook. The guidelines for providing appropriate and complete medical care are in conformity with the guidelines of the CPT and the United Nations. Medical personnel receive training in the guidelines.

(c)

Training in social communication skills is part of the PIW curriculum, which also focuses on the Police Code of Conduct and Police Instructions on the Use of Force. See table 9 (2016 curriculum) in the annexe.

With regard to the police see the answer under (a) above.

(d)

Prison officers and medical personnel are alert to issues related to violence against ethnic minorities as well as violence against persons because of their sexual orientation or gender. However this subject has not yet been explicitly incorporated into official training or courses.

(e)

This subject is not yet part of official training or courses at the SDKK.

**13. Please indicate whether the State party has developed specific methodologies to evaluate the effectiveness and impact of such training on the prevention and absolute prohibition of torture.**

The Netherlands

The Training and Study Centre for the Judiciary and the Dutch Custodial Institutions Agency evaluate all courses after they have taken place. We are not aware of any specific methodologies for evaluating the effectiveness of such training in relation to the prevention of torture.

Curaçao

Not applicable at present.

**14. In the light of the Committee's previous concluding observations (para. 21) and the information received from the State party on follow-up to the concluding observations, please provide updated information for each part of the State party and for the period under review on:**

**(a) The status of adoption of the Compulsory Mental Health Care Bill and the changes it introduced to the current regime. Please also indicate the legal grounds for placing a person under involuntary confinement in psychiatric or social-care institutions;**

**(b) The status of adoption of the action plan and all measures to prevent and deal with wrongdoing in care facilities for persons with an intellectual disability;**

**(c) The measures taken to ensure that such confinement takes place only on the basis of a legal decision, as a measure of last resort and for the shortest appropriate period of time, as part of a procedure that takes into account the views of the individual concerned and that re-evaluates the decision of confinement at appropriate intervals with regard to its continuing necessity;**



**(d) The number of persons held in psychiatric and social-care institutions on an involuntary basis and the various means of challenging such detention initially and periodically, including the measures taken to facilitate access to complaint mechanisms for interned persons. Please indicate how many complaints challenging the legality of the detention have been lodged during the period under review and the results thereof;**

**(e) The measures taken to develop community-based or alternative social-care services for persons with psychosocial disabilities;**

**(f) The status of adoption of the multidisciplinary guidelines on compulsion and restraint and the changes they have introduced into the current regime;**

**(g) Any other measure taken to prevent the use of restraints and isolation as punishments in psychiatric institutions and to strictly restrict measures of control so that they are used only as a last resort when other alternatives for control have failed, for the shortest time possible and under strict supervision. Please indicate the maximum time during which isolation and restraints can be used, what other alternative measures are in place as measures of control and whether there is regular medical supervision of the use of restraints.**

#### The Netherlands

(a)

The Compulsory Mental Health Care Bill (WVGZ) and the partially amended Care and Compulsion Bill (WZD) have been passed to the Senate for consideration. The grounds for involuntary admission are the presence or substantial risk of serious disadvantage, concepts which are explained in detail in the draft legislation.

(b)

The action plan runs from May 2013 to 2018.

(c)

Patients can only be admitted on an involuntary basis to a registered institution pursuant to a court order. Before forwarding a request for involuntary admission to the court, the independent Care Needs Assessment Centre (CIZ) determines whether the patient is resisting admission, whether serious disadvantage is at issue and whether admission and stay in an institution would comply with the principles of proportionality and minimum coercion, and the criterion of effectiveness. The

periods within which orders for involuntary admission must be reassessed are laid down in the legislation.

(d)

Please see the annexe to this answer for statistical data and an explanation of the figures.

(e)

The draft legislation is also concerned with patients' return to society: the care or treatment plan addresses the patient's needs in this respect. The physician treating the patient discusses this with the municipality in question.

(f)

The government has commissioned multidisciplinary guidelines on problem behaviour among adults with an intellectual disability. In mid-2017 multidisciplinary guidelines on reducing compulsion and restraint are expected to be adopted. The aim of the guidelines is to minimise the use of seclusion (isolation).

(g)

Care providers must always report the use of compulsion, including seclusion, to the Health Care Inspectorate (IGZ). Institutions self-assess in accordance with the new IGZ assessment framework,<sup>1</sup> and the IGZ subsequently carries out unannounced inspections. Agreements have been reached with the sector on minimising the use of seclusion, and converting seclusion rooms to high and intensive care units or high-security rooms. In 2016, twelve large mental health institutions signed a manifesto undertaking to close all seclusion rooms by 2020. The Compulsory Mental Health Care Bill makes it possible to provide compulsory care on an outpatient basis as well.

## Curaçao

(d)

The psychiatric hospital Klinika Capriles has 199 beds and Brasami, a rehabilitation clinic, has 12 beds in the secure unit. For the involuntary admission, treatment and discharge of patients a

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<sup>1</sup> Use of Seclusion Assessment Framework 2016, IGZ, March 2016.

statement from a physician or the Ministry of Justice (*krankzinnige verklaring* or KZ) is required. The KZ is issued at the time of admission and always involves an evaluation by a psychiatrist. Treatment and care in Klinika Capriles is based on the concept of restorative care and systematic rehabilitation.

(e)

At present strengthening community-based social care services for persons with psychosocial disabilities is high on the priority list.

(f)

On 1 January 2013 Klinika Capriles affiliated itself with the Complaints Committee of the Federation of Care Institutions. In 2015 no complaints were lodged with the Committee concerning care and services provided by Klinika Capriles.

(g)

When the policy document on safety was adopted and the Safety Steering Committee set up in 2015, a number of documents concerning the quality of involuntary admissions were drawn up. These included the involuntary admissions performance indicator (the aim of which was to reduce involuntary admissions), the voluntary agreement concluded by Klinika Capriles, the Public Prosecutor's Office and the police on responding to aggression and violence, and the introduction of guidelines on the use of seclusion.

Since 2015 success in reducing the number of forced seclusions is a performance indicator under the safety policy of the Curaçao mental health services. The automated reports provided by EZRA, a digital care registration system specifically developed for addiction care and mental healthcare institutions, are used to establish this indicator and encourage institutions to work in accordance with it. As yet, registration of the length of periods spent in seclusion is not part of the system.

Compared with 2013 (95 cases), incidents of isolation rose by 53% in 2015, though the duration of such incidents fell by 4% (2013: 26.17 hours). Seclusion, even when patients are locked in their own room, merits continued attention. In 2015 there were 642 cases of seclusion in isolation cells\* while the average duration of seclusion in isolation cells was 19.43 hours. It should be noted that the same patient may be placed in isolation/seclusion several times.

**15. In the light of the Committee's previous concluding observations (paras. 16 and 18)**

**and the information received from the State party on follow-up to the concluding observations, please provide updated information for each part of the State party and for the period under review on: the measures taken to avoid the use of restraints, isolation and solitary confinement on undocumented migrants, including the use of restraints during forced returns, the use of handcuffs in alien detention centres, and the use of isolation measures and continuous monitoring with video surveillance of persons on a hunger or thirst strike or with suicidal thoughts. In this regard, please provide annual statistical data from 2013 onwards on the number of undocumented migrants placed in isolation and the measures taken to prevent suicide in places of detention without resorting to the use of isolation. Please also clarify whether the use of restraints and solitary confinement, as well as the maximum time during which they can be used, is regulated and what other alternative measures are in place as measures of control. Please also clarify the role of medical personnel in the imposition of restraint measures in detention centres and provide information on the measures taken to provide a medical examination to every person being forcibly removed prior to his or her departure, and to persons returning to detention after an aborted removal operation. In addition, please provide information on the number of investigations initiated since 2013 regarding alleged incidents of excessive use of restraint and force during forced returns or the use of isolation, and indicate what the outcome of those investigations was, including the outcome of the complaint lodged by the Association of Asylum Lawyers of the Netherlands in March 2014.**

#### The Netherlands

The basic aim of the new bill on return and immigration detention is to have as few restrictions as possible. As a result, the existing powers of the detention centres to use force have been assessed in the light of this aim. A detainee will only be placed in protective isolation if this is absolutely necessary for his/her safety and/or that of personnel and others in the centre. Secondly, isolation as a disciplinary measure is possible if the person concerned has grossly misbehaved (for example, has stolen goods from other detainees, destroyed property or been violent towards staff etc.). The use of isolation is governed by a number of procedural safeguards to ensure the proper application of the measure, such as an interview with the director of the centre before the measure is imposed and legal remedies (a complaints committee within the centre and the possibility of appeal to the Council for the Administration of Criminal Justice and Protection of Juveniles). The maximum duration of protective isolation is in principle two weeks, but the measure will be ended as soon as it is no longer necessary. In certain circumstances a person may be isolated in his/her own room instead of in a cell. Examples of other measures are

given in the information on follow-up (page 26). If safely possible in the specific case, isolation rooms are equipped with facilities (sound and vision via touch screen) to reduce the risk of sensory deprivation. There is also daily contact with detention centre staff.

If a migrant is placed in isolation, the physician at the detention centre is informed. In the case of protective isolation, a psychologist or physician will assess the situation every day to see if the measure is still necessary. No migrants are placed in isolation for the sole reason that they are on hunger strike. As a rule, migrants stay in their own rooms. If migrants have to be monitored for medical reasons (because they are on hunger strike, or for their own protection if they have suicidal thoughts) they can be placed under camera surveillance. The director of the centre has to ask advice from the physician or from a psychologist if camera surveillance is being considered.

Annual statistical data on the number of undocumented migrants placed in isolation is not available.

On 25 April 2014 the Inspectorate of Security and Justice (IVenJ) wrote to the Dutch Association of Asylum Lawyers (VAJN), in response to letter from the VAJN to the Dutch NPM concerning hunger strikes among detainees. In its letter the Inspectorate explained that the NPM is not a complaints body, as the VAJN itself had noted. However, the Inspectorate is grateful to receive information on the state of affairs in detention centres from various quarters. It is considering the placement of detainees in isolation for reasons of order and security and the points of concern listed by the VAJN will be taken into account. As coordinator of the Dutch NPM network, the Inspectorate will also inform the participating organisations of the VAJN's letter.

With regard to the use of handcuffs, this will be regulated in legislation which is still at the drafting stage. This legislation too will adhere to the principle of as few restrictions as possible. Details concerning the use of handcuffs were provided in the information on follow-up.

During forced returns, the Royal Netherlands Marechaussee (RNM) accompany detainees from their arrival at the airport. RNM officers try to make the person being returned feel at ease and explain what is going to happen, treating them with respect and trying to prevent escalation. If the person concerned resists expulsion, the only measures of restraint allowed are handcuffs, body cuffs, Velcro straps, tie wraps and transparent masks. RNM officers are at least 23 years of age, receive special training and adhere to the Frontex code of conduct. In addition, the RNM is subject to independent inspection. With regard to investigations and outcomes, please see the annexe to this answer.

If a person is to be forcibly removed and there are signs that medical issues might prevent

removal, or if the person indicates this him/herself, the Repatriation and Departure Service calls in a physician to assess whether the person is fit to fly (possibly with extra medical facilities). After an aborted removal operation, a person returning to detention will only be medically examined in cases where force has been used.

### Curaçao

Isolation and handcuffs are only used as a last resort in the case of undocumented migrants. During exercise periods the control room monitors their movements. There are no cameras in their living/sleeping areas.

As a Small Island Developing State (SIDS), Curaçao does not as yet have statistical data on the number of undocumented migrants placed in isolation. As stated above, migrants are only placed in isolation as a last resort. Where there are mental health issues or a suicide watch has been put in place, male migrants are placed in the FOBA (forensic observation unit) and female migrants in the women's block.

With regard to regulation of restraints and isolation, this depends on the situation and security issues. Handcuffs are only used during transfer from the dormitory or recreation room to the office.

Contact is made with the medical service only if an undocumented migrant is ill. If called, the service responds immediately.

There are no reports of alleged incidents of excessive use of restraints during forced returns.

**16. With reference to the previous concluding observations (paras. 19, 21 and 26), please provide, for each part of the State party, annual statistical data from 2013 onwards, disaggregated by the place of deprivation of liberty and the victims' sex, age and ethnic origin on:**

**(a) the number of deaths in custody, indicating the cause of death, including the suicide of a South African asylum seeker in the Rotterdam Detention Centre on 10 June 2015; and**

**(b) the number of persons injured as a result of violence or the excessive use of restrictive measures inside places of detention, indicating whether the perpetrator was a State official or another fellow detainee. Please also provide detailed information on the outcome of investigations into such deaths or injuries, including penalties imposed on the perpetrators of torture, ill-treatment or negligence that caused the death or the injuries. In**

**this regard, please indicate whether the alleged incidents of illegal use of force, insults and mistreatment in the Koraal Specht prison in Curaçao, and in police cells in Aruba, Bonaire and Sint Maarten, have been investigated, and indicate the outcome of the investigation. Please also indicate what information and remedies were provided to the victims of such violations and their families. In addition, please indicate the measures taken to safeguard the security of detainees in the light of the violent incidents that occurred in 1999 and 2011 in maximum security prisons when, on at least one occasion, prison guards refrained from intervening in a quarrel.**

#### The Netherlands

(a+b)

Please see the annexe for statistical data.

Deaths occurring in detention are reported to the Health Care Inspectorate (IGZ). An investigation led by an external professional or a governor of a custodial institution is always conducted in the event of suicide or an unexpected death. The results of the investigation are set out in a report that is sent to the IGZ, which makes recommendations where appropriate.

The IGZ ruled that the investigation into the death of the South African asylum seeker in the Rotterdam Detention Centre was sufficiently independent and multidisciplinary. The Inspectorate found the quality of care to be adequate and endorsed the investigating committee's conclusion that there were no signs of an increased risk of suicide until the asylum seeker's medical file arrived from the COA.

Governors of custodial institutions are obliged to report incidents involving serious violence to the head office of the Custodial Institutions Agency (DJI). This only applies to violence between detainees. In all cases of alleged ethical breaches by staff in respect of detainees (dereliction of duty), the competent authority (the governor) is obliged to report the incident to the DJI Integrity Bureau. Where staff members are guilty of dereliction of duty, the competent authority must take action, for example by imposing a measure affecting their legal status. This may have to be preceded by an investigation by the Integrity Bureau. In cases where staff have used excessive violence towards detainees the Public Prosecution Service may also initiate criminal proceedings.

In 1999 an incident took place in the exercise yard of the High Security Unit (EBI) in which an inmate died. As a result, steps were taken to ensure a faster response from staff in the event of such incidents. In 2011 a second incident occurred in which one inmate attacked another in the

exercise yard. A third inmate who was about to enter the yard seized hold of the attacker and stopped the struggle. The incident lasted for two to three minutes in total. The inmate who was attacked complained about the actions of the staff who were present. His complaint was declared unfounded by the appeals committee of the Council for the Administration of Criminal Justice and Protection of Juveniles on 21 February 2012. The appeals committee found that staff had responded in an appropriate and active manner. The inmate applied to the ECtHR but his application was declared manifestly inadmissible by decision of 5 December 2013.

#### Curaçao

For the number of deaths in custody, with cause of death, see table 10 in the annexe. Between 2013 and 2016 two people died in custody, both of natural causes. For the number of injuries in 2016 see table 11 in the annexe.

The prison's Internal Relations Bureau carries out investigations concerning the involvement of personnel when injuries occur as a result of violence or the excessive use of restrictive measures. It has been operational since January 2014. Please see table 12 in the annexe.

**17. With reference to the Committee's previous concluding observations (paras. 20 and 30), please clarify whether the bill extending the grounds for pretrial detention has been adopted and, if so, please describe the changes introduced to the current regime of pretrial detention. Please also provide:**

**(a) Statistical data for each part of the State party, disaggregated by ethnicity and national origin, on the number of pretrial detainees in relation to the total number of persons deprived of their liberty, the occupancy rate of all places of detention and the average and maximum duration of pretrial detention;**

**(b) Information on the measures taken in each part of the State party to reduce the use of pretrial detention and enhance the use of alternative measures instead. Please also provide statistical data on the percentage of cases in which alternatives to detention have been applied;**

**(c) Information on any legislative changes to the criminal legislation of Aruba and Curacao to shorten the length of pretrial detention and to guarantee the right to be brought before a judge within one or two days of arrest.**

#### The Netherlands



(a+b)

The amendments to legislation extending the grounds on which pre-trial detention may be imposed entered into force on 1 January 2015. This fairly limited extension makes it possible to hold persons suspected of certain specific offences in pre-trial detention with a view to a speedy prosecution within the time limit for remand in custody by order of the examining magistrate (a maximum of 14+3 days). The courts determine whether the grounds for pre-trial detention are present.

Under current legislation, alternatives to pre-trial detention in the form of special conditions may be imposed if the court suspends pre-trial detention. These include restraining or banning orders, or an order to undergo treatment. In 2016 around 23% of pre-trial detention orders were suspended by the examining magistrate.

For statistical data and a description of measures to promote alternatives to pre-trial detention, please see the annexe.

#### Curaçao

(a)

The total number of persons deprived of their liberty between 2013 and 2016 registered by the SDKK was between 465 to 695 detainees. How many of these detainees each year were awaiting trial and how many had already been convicted is unclear. For further details please see table 13 (not yet sentenced) and table 14 in the annexe.

The new Code of Criminal Procedure (extending the grounds for pre-trial detention) has not yet been adopted. In Curaçao, great caution is exercised in the use of pre-trial detention. In other words, it is imposed only when necessary and in compliance with the presumption of innocence and the right to liberty.

(b)

In recent years Curaçao has recognised the need for improved standards of pre-trial detention and has introduced a number of alternatives. These include the Hustisia Rapido (quick justice) or HuRa system, and electronic surveillance.

For annual data on these alternatives please see table 15 in the annexe.

Excessive use of pre-trial detention causes overcrowding and in Curaçao there is only one prison

(the SDKK) to house all detainees.

(c)

Under article 87 of the Curaçao Code of Criminal Procedure, a suspect may be remanded in police custody, initially for two days but with the possibility of extension for a further eight days. After that a suspect who is not released must be brought before an examining magistrate, who may remand the suspect for another eight days.

The maximum period for which suspects may be deprived of their liberty under the Code of Criminal Procedure is 116 days or, in the event of a preliminary judicial investigation, 146 days. The more often custody is extended, the more stringent the statutory requirements and conditions to be fulfilled under the Code of Criminal Procedure become.

Suspects may at all times lodge an application for the termination of pre-trial detention or an appeal against the decision of the examining magistrate to the Joint Court of Justice (article 104 of the Code of Criminal Procedure).

**18. With reference to the previous concluding observations (paras. 14, 15 and 17) and the information received from the State party on follow-up to the concluding observations, please provide, for each part of the State party, the following information:**

**(a) Measures taken to ensure that asylum seekers arriving at Amsterdam's Schiphol airport are not automatically detained. Please clarify whether the legislative amendments introduced to implement Directive 2013/33/EU of the European Parliament and the European Council laying down standards for the reception of applicants for international protection defined the exceptional circumstances under which an asylum seeker may be detained and provided guidelines for examining the necessity and proportionality of the detention of asylum seekers, including for the purpose of further investigation, as well as to assess the risk of evading supervision for asylum seekers that will be transferred to another State member of the European Union under the Dublin II Regulation. In addition, please clarify whether asylum seekers to be transferred to another European Union member State under the Dublin system may challenge their detention in the State party or the decision to transfer them to another European Union member State. Please further indicate the measures that the State party has taken to ensure that the destination country under the Dublin system offers sufficient guarantees in the application of its asylum policy to prevent the person concerned from being removed to his or her country of origin without an assessment of the risks faced. Please also indicate whether the asylum claims**

of unaccompanied children will be considered in the State party irrespective of whether the child has applied previously in another European State. In addition, please indicate which alternatives to detention are considered when there are grounds for further investigating an asylum seeker's case. Please provide annual data from 2013 onwards on (i) the percentage of asylum seekers per year that have been detained beyond the eight-day period under the accelerated procedure, and the average duration of their detention; and (ii) the percentage of cases in which alternatives to detention have been applied;

(b) Status of adoption of the bill introducing a separate framework for the detention of undocumented migrants under administrative law and an explanation of the changes introduced to the current regime, in particular about the restrictive regime imposed at the beginning on anyone who has to spend time in detention. Please also indicate any other measures taken to ensure that undocumented migrants are detained only as a last resort, after alternative measures have been duly examined and exhausted, when necessary and as proportionate and for as short a period as possible. In this regard, please clarify whether the trial alternatives to alien detention mentioned in the information received on follow-up to the concluding observations have been included in the legislative or normative framework, and provide annual data from 2013 onwards on: (i) the percentage of cases per year in which each of these alternatives has been applied in practice, as compared with the percentage of cases in which detention was imposed; (ii) the average duration of administrative detention of foreign nationals in each year; and (iii) the percentage of cases in which undocumented migrants have been repeatedly detained for periods longer than 18 months. Please indicate whether there are any guidelines or policies with respect to examining the necessity and proportionality of the administrative detention and prohibiting detention when there are no prospects for the migrant of being removed within a reasonable time. Please explain the measures taken to authorize stay in the State party for persons whose return is impossible or particularly difficult. Please also explain the measures taken to guarantee a prompt and thorough judicial review of decisions to deprive an individual of his or her liberty on the grounds of migration status;

(c) Measures taken to ensure that unaccompanied children and families with children are not detained or, if they are, that it is done only as a measure of last resort, taking into account the best interest of the child as a primary consideration, after alternatives to detention have been duly examined and exhausted and for as short a period as possible. Please provide annual data from 2013 onwards on: (i) the percentage of unaccompanied children and families with children that have been detained, as well as the percentage of

**each group detained for longer than 14 days; (ii) the percentage of cases in which alternatives to detention have been applied; and (iii) the average duration of such detentions. Please also explain the measures taken to ensure that the age verification process for an unaccompanied minor takes place before administrative detention is imposed. In addition, please clarify whether there are any guidelines for examining the necessity for and proportionality of the automatic detention of unaccompanied children that can be returned to their country of origin within 14 days and whether other alternatives are also considered. Finally, please indicate whether the State party has taken measures to ensure that the administrative detention of unaccompanied children does not take place in institutions for young offenders.**

#### The Netherlands

(a)

EU member states are obliged to refuse entry to persons who do not fulfil the requirements set out in article 5 of Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) and to prevent further illegal entry. Detention is often the only effective way to prevent such entry. This is not negated by the mere fact that a person has applied for asylum. Existing EU provisions allow for detention in such cases (see article 8, paragraph 3 (c) of Directive 2013/33, which lays down standards for the reception of applicants for international protection). Detention is only permissible if an application is declared inadmissible or manifestly ill-founded. This is regulated in section 6, subsection 3 and section 3, subsection 3 of the Aliens Act 2000. Unaccompanied minors who apply for asylum are not detained at the border. Families including minor children that apply for asylum after arriving at the international airport are assessed immediately and will only be detained if doubt arises as to their alleged family ties, since in such cases human trafficking of minors is a possibility. The vulnerability of these groups outweighs the risk of absconding and the relatively small security risk they present.

Asylum seekers who are to be transferred to another EU member state under the Dublin system may challenge their detention in the State party, under the same procedural provisions as other foreign nationals who are detained in the Netherlands. Legal counsel is provided for all detainees, whether they are asylum seekers or not.

The Dutch government wishes to point out that within the EU a common asylum procedure exists that all member states are obliged to comply with. The government abides by the ruling of the

Court of Justice of the European Union (CJEU) that minors cannot be transferred to the member state with responsibility under the Dublin Regulation. Detention of persons who are awaiting the outcome of their asylum procedure is rare; however, no reliable data is available.

(b)

The bill introducing a separate framework for the detention of undocumented migrants under administrative law is still awaiting the approval of Parliament. As of 13 September 2013 all alternative measures are formally in use and are codified in the Aliens Act. There is no information available on the proportion of cases per year in which alternative measures are applied. The average duration of administrative detention of third-country nationals was 72 days in 2013, 67 days in 2014, 55 days in 2015 and 45 in 2016. No third-country nationals are detained for longer than 18 months in administrative detention.

All detention cases are reviewed by a court. State-funded legal assistance is available. Appeal proceedings take place as soon as the third-country national has lodged an appeal, and within 28 days if he/she does not lodge one. Third-country nationals who are unable to return may be eligible for a residence permit under the 'no-fault' policy laid down in the Aliens Decree.

For further details see pages 28 and 29 of the information on follow-up.

(c)

As of September 2013 families with children are no longer placed in detention prior to removal, unless the parents have previously evaded government supervision. However, the change in policy resulted in a higher number of unregistered departures by families with children. As a consequence, more of these families ended up in illegality. This situation was deemed undesirable, and after a secure family accommodation centre (GLO) with more internal freedom, personal space and amenities was opened on 1 October 2014, it was decided henceforth to place families with children in the GLO in the period preceding departure. Such placement is subject to the condition that departure is certain and imminent (within 14 days).

Unaccompanied minors can be placed in the GLO as a measure of last resort,<sup>2</sup> applied if the person concerned has been convicted of a crime, if he/she has evaded supervision or if departure is due to take place within 14 days. The age of unaccompanied minors is verified the first time

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<sup>2</sup> Unaccompanied minors are no longer placed in institutions for young offenders.

they come in contact with the Immigration and Naturalisation Service, Repatriation and Departure Service or police. Verification is performed by at least two people.

Residence in the open family locations is an option for all families with under-age children. In the case of unaccompanied minors, this will be either in a specialised reception centre or in accommodation organised by the guardianship organisation Nidos.

For statistical data and an explanation of the figures, please see the annexe.

**19. With reference to the previous concluding observations (para. 16) and the information received from the State party on follow-up to the concluding observations, please indicate whether all the alien detention centres in each part of the State party are using body scanners and whether strip searches and body cavity searches are still carried out and, if so, on what grounds and whether they are always carried out by persons of the same sex as the person being searched. Please also provide information on the number of investigations initiated regarding alleged incidents of abusive behaviour during searches and indicate the outcome of those investigations, including the case of a female asylum seeker at the Zeist Detention Centre who was allegedly subjected to humiliating treatment on 7 March 2012 during a strip-search. Please also provide, for each part of the State party, the occupancy rate of reception and alien detention centres, disaggregated by place of detention. In addition, please indicate the measures taken to provide sufficient medical care to undocumented migrants, as well as sufficient care for persons with mental disabilities, at the detention centres. Please also indicate the measures taken to facilitate access to visits and contact with the outside world in detention centres, and to ensure that the conditions in reception centres and detention centres are adequate to the needs of children hosted therein.**

#### The Netherlands

All detention centres have had body scanners since 2014. Strip searches and body cavity searches may only be conducted in exceptional circumstances and are in principle performed by a person of the same sex, except where precluded by extraordinary circumstances, for example violence on the part of the person being searched. In the 2012 case before the ECtHR referred to by the Committee (which predates the body scanners) the government proposed a friendly settlement, which the applicant refused. No overview is available of the number of complaints and their outcome.

All persons in the Netherlands, including those without residence rights, are entitled to necessary

medical care. Third-country nationals being held under immigration powers have access to psychological care, a unit for detainees requiring extra care and a special centre for psychiatric patients (Veldzicht) or a specialised hospital. Detained third-country nationals are entitled to two hours visiting per week, more if there is space available. The Return and Immigration Detention bill will extend visiting hours to four hours per week.

Please see the annexe for the occupancy rate of reception and immigration detention centres. For other details see the answer to question 18c.

**20. Please provide information on the measures taken to amend the laws related to the juvenile justice system in order to ensure that all children under the age of 18 are treated under a system of juvenile justice, irrespective of the gravity of the charges brought against them. Please also indicate the measures taken to promote the use of alternative measures to detention for children in conflict with the law and to ensure that the deprivation of liberty of any child below the age of 18 is used as a measure of last resort, when other alternative measures have been exhausted and for the shortest possible time. Please also explain the steps taken to ensure that no child under the age of 18 is held in an adult penitentiary institution, particularly in Bonaire, and that children are not detained with adults in police custody. Finally, please explain the measures taken to ensure the provision of qualified and independent legal aid to children in conflict with the law at an early stage of the procedure and throughout the proceedings.**

#### The Netherlands

Children under 18 who commit offences are tried under juvenile criminal (procedural) law. Although the general rule for those aged 16 and 17 is that juvenile criminal law is applied, the court may decide under article 77(b) of the Dutch Criminal Code to try them under general adult criminal law. In arriving at this decision the court takes into consideration the offender's character, the seriousness of the offence or the circumstances under which the offence was committed. Furthermore, under article 77(c) of the Dutch Criminal Code, the court can impose a sentence under juvenile criminal law on young adults between 18 and 22 years of age, taking into account the character of the offender or the circumstances in which the offence was committed. Before the entry into force of the 'Adolescent Criminal Code' on April 1 2014, this was only possible for young adults aged between 18 and 20.

If the court decides to try a 16 or 17 year-old as an adult under general criminal law, the young offender will be placed in an institution for adult offenders. The court takes this into account when

deciding whether to apply adult criminal law. This option is used in about 1% of cases. It should be noted that almost all the minors on whom a general criminal law penalty is imposed have turned 18 by the time enforcement of the penalty begins. In Bonaire the Caribbean part of the Netherlands it is also possible to try minors aged 16 or 17 under general criminal law and to execute custody who are sentenced under general criminal law can be held in an adult custodial institution.

The Dutch Supreme Court held that under-age suspects have the right to be assisted by a lawyer or other representative (parent, guardian or other trusted person) during questioning by the police. In principle, parents also have access to the minor suspect outside the context of questioning and thus the opportunity to provide assistance (other than legal). The modernisation of the Dutch Code of Criminal Procedure will entail a consideration of whether parents may be granted special access to the police interview. It should be noted that the presence of parents or legal guardians may not always be in the child's best interests.

Minor suspects can be accompanied to the court hearing by counsel and can ask for a lawyer. In certain cases, the court may decide to appoint a lawyer. In accordance with article 496 of the Code of Criminal Procedure, parents or guardians are required to attend the hearing and are permitted to speak on their child's behalf.

Under the reservation the Netherlands made to article 40 of the Convention on the Rights of the Child, minors can be detained and questioned in the absence of a lawyer or their parents. The Netherlands has maintained the reservation, as it believes that it should be possible for minor violations of criminal law to be settled without legal assistance.

Minors are separated from adults in the holding cell complex for arrestees, during transport to and from the complex and during exercise.

**21. With reference to the Committee's previous concluding observations (paras. 8 and 30), please provide, in all four parts of the State party, annual statistical data from 2013 onwards, disaggregated by crime and the ethnicity, age and sex of the victim on: (a) the number of complaints filed and police reports initiated relating to torture, as well as the number of such complaints related to ill-treatment; attempted commission of, or complicity or participation in, such acts; and killings or excessive use of force, allegedly committed by, or with the acquiescence or consent of, law enforcement, security, military or prison personnel; (b) the number of investigations initiated as a result of those complaints and by which authority; (c) the number of complaints dismissed; (d) the number of complaints that**



**led to prosecutions; (e) the number of complaints that led to convictions; and (f) the penal and disciplinary sanctions that were applied, including the length of prison sentences.**

**Please also specify: (a) the number of ex officio investigations into cases of torture and ill-treatment and the number of ex officio prosecutions per year; and (b) the number of cases of torture or ill-treatment reported by doctors following medical examinations of detainees, and the outcome of those cases.**

#### The Netherlands

(a-f)

Please see the annexe to this answer for statistical data and an update on case law, as mentioned on page 14 and 15 of the information on follow-up.

#### Curaçao

(a)

During the period under review (2013-2016) there have been no complaints or police reports filed relating to torture. The number of complaints of ill-treatment in 2013 is unclear; there were 11 in 2014, 14 in 2015 and 10 in 2016.

(b)

The Public Prosecutor's Office starts an investigation as soon as it is notified of a case of ill-treatment. Investigations of police officers and prison authorities are conducted by the Internal Investigation Department of the National Police. There were no cases of torture or ill treatment reported by prison doctors following medical examinations of detainees.

(c)

The number of complaints dismissed is unclear.

(d)

The number of complaints that led to prosecution is also unclear.

(e)

The number of complaints that led to conviction is unknown.

(f)

Criminal and disciplinary sanctions can be applied, although during the period under review it is unclear what sentences were imposed.

**22. In the light of the Committee's previous concluding observations (para. 23) and the information received from the State party on follow-up to the concluding observations, please explain, for all four parts of the State party:**

**(a) How the independence of the Integrity Bureau of the Custodial Institutions Agency, the Supervisory Committee and other disciplinary bodies is guaranteed during disciplinary investigations of prison staff so that there is no hierarchical or institutional link between the suspected perpetrators and the investigator. Please provide information on whether the prosecutor is always informed of the opening and closing of disciplinary investigations by one of the above-mentioned bodies regarding cases of torture or ill-treatment, or if the prosecutor is informed only when the Integrity Bureau of the Custodial Institutions Agency or the Supervisory Committee considers that the facts warrant a criminal investigation;**

**(b) The composition of the Prison Supervisory Board competent to act upon complaints of prisoners in Aruba, and how its independence is ensured;**

**(c) How the independence of the Internal Relations Bureau at the Curacao Detention and Correction Centre, composed of a former police officer and two prison officers, and the Public Service Investigations Agency is guaranteed during the investigation of allegations of torture or ill-treatment by detention personnel, so that there is no hierarchical or institutional link between the suspected perpetrator and the investigators. Please also provide information on whether the prosecutor is always informed of the opening and closing of investigations by this body;**

**(d) How the independence of the new monitoring functions of the Security and Justice Inspectorate during operations to remove undocumented migrants will be guaranteed. Please clarify if a system for filing complaints with the Inspectorate will be in place during removal operations;**

**(e) The measures taken to ensure that all suspects in prima facie cases of torture and ill-treatment are always suspended or reassigned during the process of investigation;**

**(f) The measures taken to reduce the number of instances of ill-treatment in detention facilities, including immigration detention facilities. Please also indicate if any research was conducted into the impact of these measures, with a view to increasing their**

**effectiveness;**

**(g) Whether any criminal investigation was initiated ex officio with regard to instances of inter-prisoner violence in Aruba and Curacao and, if so, what the outcome was and whether the victims and their families obtained compensation. Please also provide information on how many cases of inter-prisoner violence have occurred since 2013 in these two places and what measures have been taken to reduce the number of such cases, as well as the period of solitary confinement imposed on prisoners as a punishment in Aruba. Please also clarify how often the physical and mental condition of detainees is monitored during solitary confinement and whether detainees in solitary confinement have any meaningful social contact during the application of that measure.**

The Netherlands

(a)

The hierarchical position of the Integrity Bureau (immediately under the director) offers sufficient guarantees of its independence. The Public Prosecution Service and/or the police must be informed where there is a suspicion that a criminal offence has been committed. Both the competent authority and the Bureau can file a criminal complaint.

(d)

The powers that the Security and Justice Inspectorate may exercise in monitoring the return of undocumented migrants are laid down by law. These focus specifically on obtaining access to the areas where the return procedure is being carried out and the persons being held in those areas. In practice, the Inspectorate uses a risk assessment to determine which removals should be monitored. The use of coercive methods during removals is part of the Inspectorate's assessment framework. If there is a suspicion that force has been used inappropriately, after the removal the Inspectorate can request to see the RNM's reports on the application of coercive methods and the removal procedure. In addition, migrants are entitled to lodge complaints with the RNM and the National Ombudsman concerning the use of force.

(e)

Any member of staff suspected of using excessive force is suspended or transferred for the duration of the investigation, depending on the specific circumstances (the seriousness of the complaint and the probability that force was actually used). In some cases the staff member is temporarily transferred to a location where he/she will not come into contact with detainees. The

government would emphasise that the use of unjustified force against detainees is rare.

(f)

All DJI staff have to observe its code of conduct and take an oath or make a solemn affirmation that they will act as befits a public official. In using force, staff members must act in accordance with the Instructions on the Use of Force in Custodial Institutions. The primary criterion is that the use of force must be necessary; in addition, it must meet the criteria of proportionality and minimum coercion. Staff are trained in the use of force. Under article 9 of the Instructions a member of staff who has used force or applied a measure restricting a detainee's freedom of movement must report this immediately to the governor of the custodial institution or to the assignment officer. The report must be in writing and must clarify the reasons for the use of force, the consequences of its use and the name of the person who ordered the use of force. The very limited number of cases in which it has been established that the use of force was unnecessary shows that these measures are effective.

#### Curaçao

(c)

The independence of the Internal Relations Bureau at the SDKK is guaranteed by the protocol governing work procedures. In addition, all investigations are subject to peer review. The Bureau reports directly to the prisoner governor and there are no other hierarchical links between the Bureau and other departments.

The prosecutor is not informed of the opening and closing of investigations carried out by this body.

(f)

No specific measures have been put in place, although in general the training provided for prison officers and the possibility of prosecution have the same effect.

(g)

In 2016 an incident occurred in which a detainee was allegedly thrown from the second floor by his fellow detainees. The investigation is still pending. Cases of inter-prisoner violence are reported separately; there is no database available that provides a complete overview of cases per year.

The physical and mental condition of detainees during solitary confinement is monitored by prison officers and medical staff. Social contact during solitary confinement is limited to contact with prison officers.

**23. With reference to the Committee's previous concluding observations (para. 22) and the information received from the State party on follow-up to the concluding observations, please provide information, for all four parts of the State party, on:**

**(a) Measures taken to sensitize detainees, including in immigration detention centres, about the possibility of and procedure for filing a complaint of alleged torture or ill-treatment by State officials, and to make such information widely publicized, including by displaying it in all places of detention;**

**(b) Measures taken to guarantee the confidentiality of complaints and the protection of complainants and victims, particularly in cases in which the victims are deprived of their liberty, and to protect victims or complainants against intimidation and reprisals as a consequence of their complaints;**

**(c) Measures taken to ensure that the complaints received by the supervisory committees are formally and satisfactorily answered and investigations are initiated whenever there are allegations of torture, ill-treatment or poor detention conditions. Please clarify whether a complainant is always informed of the outcome of his or her complaint, including if he or she has been released from a detention facility.**

#### The Netherlands

(a)

The description on pages 3 and 4 of the information on follow-up of how custodial institutions address this issue still applies. A similar approach is followed in immigration detention centres, the relevant information being available in 23 languages.

(b)

The confidentiality of complaints is guaranteed in that they are handled by an independent, statutory complaints committee which is part of the Supervisory Committee and has at least one member who is a member of the judiciary. The decision of the complaints committee can be challenged before the appeals committee of the Council for the Administration of Criminal Justice and Protection of Juveniles. Appeals are heard in camera. If detainees fear that they may suffer

reprisals because of the complaint, they can lodge another complaint to that effect or raise the matter during the hearing before the complaints committee. There are no indications that any such reprisals have taken place.

(c)

Detainees are informed of the decision on their complaint. If the person in question is no longer detained, the supervisory committee will send the decision to his/her address if it is known to the authorities.

### Curaçao

(a)

The procedure for filing a complaint is explained when detainees arrive at the detention centre. It is also explained in the prison regulations. Each block is represented by a committee of detainees. These detainees can also explain the procedure for filing complaints to new detainees.

(b)

In 2016 a pilot project was started with mailboxes in four blocks in order to guarantee confidentiality and to make sure all complaints are received. Complaints are handled by a complaints coordinator who is independent and reports directly to the governor. Serious complaints may be investigated by the Quality and Audit Department.

(c)

Once a month the supervisory committee meets with the governor to discuss complaints and allegations of ill-treatment and poor detention conditions. The governor responds during the meeting, or if further investigation is required, the questions are answered in a report issued the following month. Complainants are always informed of the outcome of their complaints if they are still at the detention facility. This may not take place if they have been released from the facility.

**24. With reference to the Committee's previous concluding observations (paras. 24 and 30) and paragraph 46 of its general comment No. 3 (2012) on the implementation of article 14 by States parties, please provide information for each part of the State party on:**

**(a) Compensation ordered by the criminal and civil courts, as well as the Criminal Injuries Compensation Fund, to victims of torture and ill-treatment and their families since the consideration of the previous periodic report. This information should include the**

**number of requests for compensation that have been made, the number of requests granted and the amounts ordered and actually provided in each case. Please explain which measures have been taken in each part of the State party to provide other forms of redress (restitution, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition) to victims of torture and ill-treatment, and how many of these measures have been granted effectively to victims of torture and ill-treatment for the period under review;**

**(b) Any rehabilitation programmes for victims of torture and ill-treatment, specifying whether they include medical and psychological assistance;**

**(c) Protective measures available to victims of torture or ill-treatment and members of their families, indicating the number of protective measures that have been made available to victims of torture, compared with the number of requests made. Please also state whether victims of torture have access to free legal aid.**

The Netherlands

(a)

Please see the annexe for statistical data and measures to provide redress.

(b)

Every person in the Netherlands who has suffered an injury is entitled to appropriate medical treatment, including psychological care. Some of the costs may have to be borne by the person concerned.

(c)

In 2017 the Act implementing Directive 2012/29/EU establishing minimum standards on the rights and protection of victims of crime will come into force. In the Netherlands protective measures for the victims of crime include preventing unnecessary delays in police interviewing after a criminal complaint has been lodged, and keeping the number of interviews and – where necessary – medical examinations to a minimum. In addition, questions about a victim's personal life are permitted only if they are absolutely necessary and relevant to the offence, and where possible measures are put in place to restrict contact between the victim and the alleged perpetrator in court buildings. Furthermore, in 2017 a national system of individual victim assessments will be introduced to identify specific needs for protection and to enable measures to be taken where

necessary to prevent secondary or repeated victimisation, intimidation or reprisals.

All victims of sex offences or other violent crimes which result in severe physical and/or psychological injuries may apply for free legal assistance from specialist lawyers. Victim Support Netherlands gives victims appropriate legal assistance, and emotional and practical support to assist in their rehabilitation and to address material losses and psychological pain, all of this free of charge.

#### Curaçao

(a-c)

During the period under review there were no prosecutions for torture, and therefore no compensation was awarded to victims. Though cases of ill-treatment were prosecuted during the period under review, there is no clear picture of how many cases there were nor how much compensation, if any, was awarded.

**25. Please indicate which redress measures, if any, were granted to the victims of the fire in the immigration detention centre at Amsterdam's Schiphol airport in 2005 or to their families. Please also clarify whether criminal or disciplinary proceedings were initiated against the authorities in charge of the immigration detention centre in relation to the fact that fire precautions severely failed during the event.**

#### The Netherlands

The survivors of the fire at the immigration detention centre received a standard compensation amount of €1,750, or €10,000 for those suffering from PTSD. The State has offered the families of those who died in the fire compensation on the basis of the circumstances of each individual case. No information can be disclosed on the amounts awarded as the relatives have been promised confidentiality. Publishing the amounts could lead to problems for the families and possibly even risks to their safety. It should be remembered that most of them come from countries with lower living standards and incomes than the Netherlands. Public knowledge of any awards and the amounts involved could make them vulnerable to extortion or other forms of crime. The Dutch authorities would be unable to protect the families in the event of problems with third parties.

Immediately after the fire the Public Prosecution Service started a wide-ranging investigation that took 18 months to complete. The investigation focused on the possible causes of the fire, the spread of flames and smoke, the construction and state of repair of the building, the applicable regulations, monitoring of compliance with those regulations and the actions of persons and



organisations after the alarm went off. Another facet of the investigation concerned the actions of persons and organisations in the period preceding the outbreak of the fire to determine how a fire in a cell could have developed into a disaster. On the basis of the results of the investigation the Public Prosecution Service announced on 4 July 2007 that it would not prosecute two prison officers and the director of the detention centre. According to the Public Prosecution Service no facts had been established that would suggest criminal acts had been committed by the organisations concerned or persons other than the detainee, who had at that time already been convicted by Haarlem District Court.

**26. With reference to the Committee's previous concluding observations (paras. 19 and 30), please provide information on:**

**(a) Annual statistical data from 2013 onwards, disaggregated by offence or crime, as well as the ethnicity, age and sex of the victim on: (i) the number of complaints filed against police officers concerning racist or racially discriminatory acts; (ii) the number of investigations initiated as a result of those complaints and which authority initiated them; (iii) how many complaints were dismissed; (iv) how many complaints led to prosecutions or disciplinary actions; (v) how many complaints led to convictions; and (vi) which penal and disciplinary sanctions were applied;**

**(b) Measures taken to monitor and prevent ethnic profiling and ethnically motivated attacks and abuses, as well as to ensure the effective investigation and prosecution of such attacks;**

**(c) Measures taken to publicly condemn attacks against minorities and increase awareness-raising measures, including among the police, to promote tolerance and respect for diversity.**

#### The Netherlands

(a)

Please see the annexe to this answer for statistical data.

(b)

In 2015 the police launched a three-year programme called 'The power of difference'. The measures taken by the police to prevent ethnic profiling focus on education and training, fostering good relations, diversity in the workforce and efforts to improve the complaints procedure. The

progress made in these areas is reported annually via the National Action Programme to combat Discrimination.

Every unit of the national police force has a Public Safety, Integrity and Complaints Department. Under the authority of the Public Prosecution Service, these departments carry out internal investigations into suspected criminal offences committed by police officers while on duty and off duty. The police take every indication, however small, of a breach of standards extremely seriously. Ethical conduct is the foundation of police work.

(c)

Since 2015 central government has been conducting 'Strike out discrimination', a long-term publicity campaign. In 2015 and 2016 the Police College updated its manuals, case studies and teaching materials regarding diversity and discrimination. Seminars on professionalisation and diversity have been held both at national level and within the various units. In 2016 the Public Prosecution Service organised a working conference on diversity.

#### Curaçao

There were no complaints filed against police officers concerning racist or racially discriminatory acts in the period under review.

(b-c)

Given that the strong impression exists that this is not something that occurs in Curaçao, no measures have been taken to address it.

**27. In the light of the Committee's previous concluding observations (para. 27), please indicate whether the pilot plan to distribute electric discharge weapons (Tasers) to the entire police force of the Netherlands has been implemented and, if so, please indicate in which parts of the State party and to which State forces they were distributed. Please also provide information on the measures taken to train the personnel allowed to use these weapons, to monitor the use of Tasers through mandatory reporting and reviews and to limit their use to extreme situations in which there is a real and immediate threat to life or risk of serious injury.**

#### The Netherlands

From 1 February 2017 to 1 February 2019 the use of electric discharge weapons as standard police equipment is being piloted in the Netherlands in a trial involving 300 police officers. The

officers receive two days of training and have to pass an exam before participating. When using force, Dutch police officers must observe the principles of proportionality and minimum coercion, as laid down in section 7 of the Police Act 2012. Instructions have been drafted on the use of electric discharge weapons which take explicit account of these two statutory principles. The aim of the pilot is to reduce the incidence of injuries both among police officers and persons being arrested. Once it has concluded, the pilot will be evaluated by a team of experts and further decision-making will be based on the outcome.

**28. Please provide information on the legislative measures taken to explicitly prohibit corporal punishment in all settings, including in the home, in Aruba, Bonaire, Saba and Sint Eustatius, and to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the State party.**

The Netherlands

See the answers to questions 1 and 4c.

**29. Please provide information on the measures taken to prevent sexual abuse of children in residential institutions and foster care, in particular abuse of children with mental health conditions, and to establish child-friendly and confidential complaint mechanisms in all these settings. Please also indicate the measures taken to improve the identification of cases of ill-treatment of children by professionals working with children. Please also provide information on the number of investigations initiated since 2013 regarding alleged incidents of abusive behavior against children in residential institutions and foster care and indicate what the outcome of those investigations was.**

The Netherlands

Between 2008 and 2014 considerable attention was paid in the mental healthcare services' patient safety programme to the risk of sexually inappropriate behaviour. Every mental healthcare institution has developed its own safety policy as part of its quality and safety management system, which is monitored by the Health Care Inspectorate (IGZ) .

After the inquiry conducted by the Samson Committee in 2012 into sexual abuse of children placed by the authorities in youth care institutions and foster families, the youth care sector developed a quality framework to prevent sexual abuse. This is monitored by the Inspectorate for Youth Care (IJZ). Care services for the disabled have also been taking action to prevent sexual abuse for some time now. Existing information materials have been adapted for specific groups

(people with autism or Down syndrome, for example) and in 2013 guidelines on child abuse, domestic violence and inappropriate behaviour were developed specifically for people with an intellectual or physical disability.

All youth care providers must have a complaints procedure and a complaints committee with an independent chair. Complainants can be assisted by an independent adviser during the procedure.

All institutions and professionals working in the youth care sector must report all serious incidents to the IJZ/IGZ, including sexually inappropriate behaviour and violence occurring during the provision of youth care. In addition, they must establish a reporting code describing the various steps to be taken when signs of domestic violence and child abuse are identified. For advice in this area professionals can call upon the Veilig Thuis ('Safe at Home') domestic violence advice and reporting centres.

In 2013 the IJZ received 119 reports of serious incidents in the youth care sector (institutions and foster families) and 127 reports in 2014. Before 1 January 2015 serious incidents in the care for those with mild intellectual disabilities and the mental health services were reported to the IGZ. Since 1 January 2015 they have been reported to the IJZ: 210 reports in 2015 and 234 in 2016.

**30. Please provide information on the legislative and other measures taken to improve the identification and determination of statelessness and establish an efficient and accessible procedure for determining statelessness among children born in the State party.**

#### The Netherlands

A bill to establish a procedure for determining statelessness in the Netherlands is in preparation. The procedure will be open to all stateless persons, regardless of their migratory status, place of birth, income or age. A person claiming to be stateless can have his/her status determined in a specialised civil court in a procedure in which the Immigration and Naturalisation Service has an advisory role. A new right to acquire Dutch nationality for stateless children will also be incorporated in the bill; in certain circumstances this right will be extended to children residing illegally in the Netherlands. The bill is expected to be presented to parliament in 2017.

**31. Please provide information on the amendments to the Medical Research Act in relation to non-therapeutic medical research involving minors and adults who are incapable of giving informed consent. With regard to persons with variations of sex**

**development (intersex persons), please clarify whether unnecessary medical or surgical treatment aimed at determining the sex of a child is permitted and performed on children and adults who are incapable of giving informed consent. If so, please indicate which criminal or civil remedies are available for victims in these cases and whether they are subject to any statute of limitations.**

#### The Netherlands

The Medical Research (Human Subjects) Act has been amended with respect to the norms for research involving minors and decisionally incompetent adults. The Act entered into force in 1999 and contained a highly restrictive provision governing research involving these subjects. In practice it proved too restrictive, creating unnecessary obstacles to the development of new therapies for these groups. For this reason, the statutory options for such research have been slightly expanded to conform with the international norms for clinical drug trials to be established under the Clinical Trials Regulation (CTR) EU No. 536/2014. More specifically, this means that non-therapeutic research using these groups is permitted if the trial involves minimum risk and minimum burden compared with the standard treatment for the condition the subject is suffering from.

Section 2 of the Care Sector (Quality, Complaints and Disputes) Act (WKKGZ) obliges care providers to provide good quality care. At a minimum, this means that care providers must act in accordance with professional standards, which includes obtaining informed consent. This Act is general in scope and therefore covers the care and treatment of intersex persons. Unnecessary medical and surgical treatments do not in principle constitute good quality care. The IGZ can enforce the law where care providers are carrying out procedures that are not in accordance with professional standards.

Under the WKKGZ a patient or parent can lodge a complaint with the help of a complaints official (free of charge). Complaints must be dealt with within six weeks (with a possible extension to ten weeks) preferably by means of an open discussion between patient/parent and the care provider. If this is unproductive, the patient/parent can submit the dispute to an independent dispute settlement body, which can give binding decisions and grant compensation up to a maximum of €25,000. The patient/parent can also submit the dispute to a civil court.

**32. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has**

**ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.**

#### The Netherlands

On 29 August 2014 the Minister of Security and Justice and the Minister of Social Affairs and Employment adopted a comprehensive action programme to combat jihadism as part of the government's efforts to fight terrorism.<sup>3</sup> The programme gave rise to a number of legislative proposals which entered into force on 1 March 2017. At the time of writing, no information is available on the number of persons to whom the legislation has been applied. Please see the annexe for more information on the action programme and the legislative proposals.

With regard to the question of whether the measures taken comply with obligations arising from international law, the government would note as follows. Article 94 of the Dutch Constitution states that 'Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons'. Furthermore, Dutch criminal law contains a provision (article 131 of the Criminal Code) that criminalises incitement to commit a terrorist offence, as required by United Nations Security Council Resolution 1624. Although the measures to prevent Dutch nationals from travelling to Syria or Iraq – an obligation under UN Resolution 2178 – are an infringement of the right to freedom of movement guaranteed by article 2 of Protocol No. 4 to the ECHR, article 12 of the Covenant on Civil and Political Rights (ICCPR) and article 2, paragraph 4 of the Constitution, the Dutch courts have ruled that they do not constitute an unlawful breach of that right since 'the right to leave a country may be restricted by law if the restriction has a legitimate aim, is necessary, proportionate and temporary, and provided an individual assessment is made every time the restriction is imposed. These conditions were met in the case of a declaration under the Passport Act that a passport had expired.'<sup>4</sup>

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<sup>3</sup> The Action Programme is available in English at: [https://english.nctv.nl/binaries/def-a5-nctvjihadismuk-03-Ir\\_tcm32-83910.pdf](https://english.nctv.nl/binaries/def-a5-nctvjihadismuk-03-Ir_tcm32-83910.pdf).

<sup>4</sup> The Hague District Court, 7 November 2016, ECLI:NL:RBDHA:2016:13414.

The Police College is the centre for training, knowledge and research for the Dutch National Police. It offers a variety of courses dealing with counterterrorism measures. All police officers receive basic training enabling them to identify signs of radicalisation and/or terrorism; they are taught how to respond to these signs in accordance with relevant legislation. In addition, the Police College offers specialised training, including special courses for criminal intelligence officers and detectives, and a course on open-source intelligence. Particular attention is paid to community policing, both in general and in relation to identifying signs of radicalisation and/or terrorism.

With regard to legal safeguards and remedies the following is worthy of note. Under the General Administrative Law Act decisions and orders made by the authorities under administrative law can be challenged before the administrative courts. Administrative law offers a number of remedies assuring a rapid response from the courts regarding the lawfulness of a measure. With respect to antiterrorism legislation, extra safeguards have been provided for over and above the usual review by the administrative courts. Please see the annexe for details.

No overview is available of the number of complaints lodged by persons detained under antiterrorism legislation concerning non-observance of international standards.

**33. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations. Such measures may include institutional developments, plans or programmes, including resources allocated, statistical data and any other information that the State party considers relevant.**

#### The Netherlands

The government refers to the answers given above and relevant annexes.

#### Curaçao

General institutional developments in Curaçao that followed the constitutional changes of 10 October 2010 include a move towards stronger government institutions. This means that Curaçao government institutions will be better able to perform their tasks, including those in the field of compliance with human rights obligations.

Curaçao's financial position has improved compared with the situation in early 2013.

Consequently, although no additional resources have been allocated at present to preventing or prosecuting human rights violations, the chances of finding and allocating resources for new issues have greatly improved.

Overall awareness with regard to human rights increased after a total of five human rights sessions were held by the Directorate of Foreign Relations. During these sessions government bodies and NGOs discussed a variety of relevant human rights challenges and brainstormed on a joint way forward.